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To: The Commission

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FCC Docket Nos. 06-150, 94-102, and 01-309 (FCC 06-114)  
Vermont / North Dakota / Nebraska / Maine Reply Comments

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Filed: October 20, 2006

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1. The signatories to these reply comments amplify their earlier comments that there is a public interest in the expansion of wireless and broadband service through the use of the 700 MHz spectrum. This interest extends to smaller markets as well as larger ones. Using small license areas, adopting high performance standards and adopting a policy of re-licensing unused spectrum are important steps that the Commission should take to ensure that the upcoming

auction brings benefits to the greatest number of communities. Despite comments from those who might wish the Commission to ask less of licensees, we continue to ask the Commission to require more extensive commitments from licensees in this prime spectrum.

## **II. SUPPORT STRONG PERFORMANCE STANDARDS**

2. We continue to support enhancements to the “substantial service” standard for bands to be licensed in the upcoming 700 MHz auction, enhancements that require licensees to take on the obligation to serve more of their licensed areas. While we continue to support the adoption of a requirement that licensees serve 90% of the population in their license areas or 75% of the geographic area within eight years,<sup>1</sup> we would also support the adoption of the geographic build-out requirements by the Rural Cellular Association,<sup>2</sup> which are similar to the geographic build-out requirements we proposed in our comments of September 29, 2006.

3. Our original comments supported high population- or geographic-based coverage requirements for licenses auctioned over CMAs, and the use of CMAs for most of the blocks to be auctioned. In the event that the Commission was to adopt the proposal of a number of commenters to auction a substantial amount of the remaining 700 MHz spectrum over somewhat larger license areas such as Economic Areas, (EAs), we nevertheless believe that strong build-out requirements would still be important and should be required as we have proposed.

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<sup>1</sup> We also recommended that the Commission adopt interim coverage milestones of 50% of population by five years or 40% of area by five years. Comments of Vermont Department of Public Service, Vermont Public Service Board, Vermont Office of the Chief Information Officer, North Dakota Public Service Commission, Nebraska Public Service Commission, ConnectME Authority, and Maine Office of the Chief Information Officer, WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309 at 7-8 (Filed Sept. 29, 2006) (“Vermont/North Dakota/Nebraska/Maine Comments”).

<sup>2</sup> These build-out requirements would require licensees to cover 25% of the license area at three years, 50% at five years, and 75% at eight years. Comments of Rural Cellular Association, WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309 at 9 (Filed Sept. 29, 2006) (“RCA Comments”).

4. A number of other commenters opposed introducing performance requirements that exceed the current “substantial service” standard.<sup>3</sup> We disagree. We note that the commenters that have put forth this position are largely operators of established mobile wireless service operations. It is not surprising that some such parties would wish to have the opportunity to acquire additional spectrum with as few expectations and as much flexibility as possible. This is entirely consistent with their self-interest, but it is not necessarily the most consistent with the public interest.

5. The Commission should discount other specific objections to stronger performance requirements raised by various commenters, as explained below.

**A. Strong Performance Requirements Would Not Require Uneconomic Build-Out**

6. Verizon Wireless opposed higher performance standards on the grounds that increased performance requirements would require uneconomic build-out of services.<sup>4</sup> We also note, however, that there were comments from companies who stated an interest in providing service to rural areas who supported strong performance requirements.<sup>5</sup> The Commission should take this as evidence that there are carriers who believe that it is economic to undertake a license with strong performance requirements.

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<sup>3</sup> WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309 , Comments of AT&T at 12 (Filed Oct. 5, 2006) (“AT&T Comments”), Cingular Wireless at 9 (Filed Oct. 5, 2006) (“Cingular Comments”), Verizon Wireless at 6-9 (“Verizon Wireless Comments”), CTIA at 8-10 (“CTIA Comments”), Dobson Communications Corp at 5-6 (“Dobson Comments”), Leap Wireless at 9-10 (“Leap Comments”), MetroPCS at 15 (“Metro PCS Comments”), US Cellular Corp (“US Cellular Comments”) at 14-15, and C&W Enterprises at 3 (“C&W Comments”) (All filed Sept. 29, 2006).

<sup>4</sup> Verizon Wireless Comments at 9.

<sup>5</sup> RCA Comments at 8-10. Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies , WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309 at 5 (Filed Sept. 29, 2006) (“OPASTCO Comments”). Comments of DirecTV, Inc. and EchoStar Satellite Inc. WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309 at 9 (Filed Sept. 29, 2006) (“DirecTV and EchoStar Comments”).

7. The Commission should not be persuaded that build-out to rural areas is uneconomic simply because some carriers believe it is uneconomic for them. No carrier is forced to take on a performance requirement that they believe is uneconomic. Carriers who believe construction of a license area is uneconomic should not bid on it. Conversely, no carrier is entitled to spectrum on whatever terms make it economic for that carrier. Different carriers will have different business models and different assessments of their ability to make money on a license, and the Commission's auction process, if matched with high performance requirement, is an efficient way of matching license areas with those carriers who are willing to provide service in an expeditious manner.

**B. Strong Performance Requirements and Re-licensing Do Not Interfere with Market Forces**

8. A number of other parties' filed comments oppose strong build-out requirements or re-licensing of unused spectrum on the grounds that it interferes with market forces. We believe that this position incorrectly conflates the interests of individual actors within the market with the efficient workings of the market overall.

9. According to Verizon Wireless, "Competition in the wireless industry has flourished precisely because competitors are free to make investments in response to market forces."<sup>6</sup> We agree that competitors should be free to take on or not take on the responsibility to build out a license based on whether or not they think they will be able to operate a viable business. However, a license grants the licensee an exclusive right to control the spectrum licensed over a period of time. By the very nature of the license, then, competitors who do not control the license are not free to make investments to use that spectrum, even if they see an opportunity in the market that the license-holder does not.

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<sup>6</sup> Verizon Wireless Comments at 7.

10. Obviously, the business case for different parts of the country will vary and will have varying levels of appeal to different kinds of carriers. The best response to this fact, however, is to provide blocks which use small license areas, as we have recommended, which will allow diverse types of carriers to serve the areas that best fit their own business model, not low performance requirements and only large license areas that allow the business models of a few carriers to dictate if and when small and rural market eventually receive service.

11. High performance standards in the context of an auction do not interfere with the action of the market. Instead, they would allow wireless service providers to respond through a market mechanism to a request by the Commission for both service and monetary compensation in exchange for exclusive rights to valuable spectrum.

12. A re-licensing mechanism like keep-what-you-use also does not interfere with the action of the marketplace. Dobson Communications Corporations (“Dobson”) claims that keep-what-you-use displaces the judgment of the marketplace.<sup>7</sup> On the contrary, although it may displace the judgment of individual licensees, it enables the judgment of the marketplace by ensuring that spectrum is made available to those who are willing to make investments and develop a market in unserved areas. The Commission has as much right to insist on service in exchange for spectrum rights as a licensee has to insist on being paid compensation for spectrum rights in a secondary market; neither position interferes with the market.

13. Dobson also raises a number of concerns about keep-what-you-use that could readily be addressed while maintaining keep-what-you-use. Dobson raises the specter of speculators acquiring temporarily unused spectrum, hampering genuine service providers from accessing it

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<sup>7</sup> Dobson Comments at 6.



when they decide to build at some point in the future.<sup>8</sup> This concern is addressed if Commission rules require licensees who acquire spectrum under re-licensing also to build it within a limited period of time, and allowing original licensees to reclaim surrendered spectrum when they are ready to build if there has been no interest from others in re-licensing.<sup>9</sup> If an area is truly uneconomic to build, the spectrum will still be available when the original licensee is ready to build out service.

14. Dobson asserts that cellular re-licensing is based on antiquated formulas and assumptions as an argument against keep-what-you-use.<sup>10</sup> However, this is a better argument for the use of up-to-date formulas and assumptions than it is against the use of keep-what-you use in the 700 MHz spectrum.

15. Various commenters assert that the availability of secondary markets makes keep-what-you-use unnecessary and that secondary markets give interested parties access to unused spectrum and spectrum holders an incentive to make available unused spectrum.<sup>11</sup> While secondary markets are important, they would work better with the addition of keep-what-you-use. Without keep-what-you-use, a licensee might decide that its own long-term economic interest is best served by holding on to unused spectrum, when the public interest is better served by more rapid availability of service. Keep-what-you-use will encourage licensees to use secondary markets rather than lose valuable spectrum. Secondary markets can also address issues raised by other commenters. For example, a spectrum seller with an interest in future

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<sup>8</sup> Dobson Comments at 7.

<sup>9</sup> This option should only be available to service providers who have surrendered unused spectrum after otherwise fulfilling the performance requirements of their license.

<sup>10</sup> Dobson Comments at 8-9.

<sup>11</sup> AT&T Comments at 14-15. Cingular Comments at 11-13. CTIA Comments at 10-13. Dobson Comments at 10.

access to the spectrum being sold might structure the sale with options to buy it back at a future date or buy the system that the buyer would develop. The possibility of relicensing, combined with secondary markets, will encourage licensees to seek out creative arrangements that still serve the public interest in obtaining service.

### **III. SMALL AREA LICENSING PROPERLY BALANCES FAIRNESS AND EFFICIENCY**

16. In the comment phase of this proceeding, we supported the use of small license areas, such as CMAs, in the upcoming 700 MHz auction. Here we renew that support.

17. Some other commenters have criticized the concept of licensing the 700 MHz over small areas such as CMAs on the grounds that licensing over small areas makes it inefficient for carriers to create services over large footprints. We do not believe that the burden created is large, and are greatly outweighed by the benefits.

18. As the recently-concluded AWS auction demonstrates, companies desiring a large regional footprint can successfully bid in large numbers of small license areas auctions to create aggregations of license areas. An auction of small license areas also creates two opportunities to aggregate—both during the auction, and after the auction in secondary markets. An auction of large license areas only provides the opportunity to disaggregate after the auction, and this is at the discretion of the license holder. While companies desiring large license areas may desire the Commission to pave the way for this outcome, the Commission should instead allow bidders with business plans based on different kinds of footprints to compete in the auction.

19. We believe that the needs of smaller and rural local areas within large geographic areas deserve the attention of the Commission and of licensees. This spectrum is their spectrum, too, and these communities have greatly reduced options for obtaining service if licensing policy essentially gives away their spectrum as part of the package for licensees who bid on the largest

and most valuable markets. Licensing on a small area basis does not prevent licensees from aggregating these small areas, but it does require that they pay attention to the needs of the individual local areas as well as the aggregate.

20. Other commenters have recommended that the Commission adopt a package bidding system for the upcoming 700 MHz auction.<sup>12</sup> This would allow bidders to submit a single bid for groupings of smaller license areas. We find this to be an intriguing proposal, and one that could provide a way to accommodate both the benefits of small license areas and the desire of some bidders to create large service territories. However, if the Commission adopts a package bidding system, it should still use small license areas, not the EAG license areas recommended by DirecTV and EchoStar.<sup>13</sup> We see no reason why package bids cannot be built up from small building blocks as well as larger ones.

#### IV. CONCLUSION

21. Strong performance requirements and greater use of small license areas are the best steps that the Commission can take to make sure that the new 700 MHz licenses go to those who have a commitment to serve communities large and small. While various service providers wish to maintain more flexible requirements, this greater flexibility does not serve the interest of seeing this spectrum put to use for the greatest number of people. The Commission has the right to ask for more in exchange for this especially valuable spectrum, and it should.

Respectfully submitted this 20th day of October, 2006.

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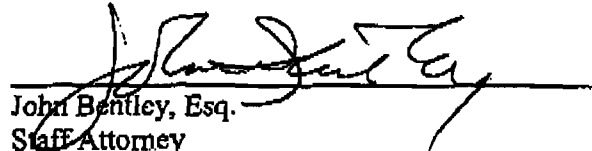
<sup>12</sup> DirecTV and EchoStar Comments at 7-8. Comments of Access Spectrum *et al.*, WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309 at 25-27 (Filed Sept. 29, 2006).

<sup>13</sup> DirecTV and EchoStar Comments at 7.

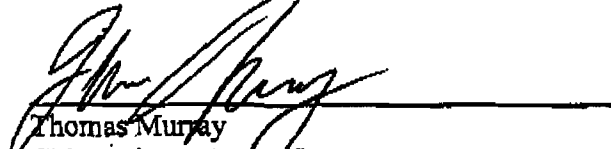
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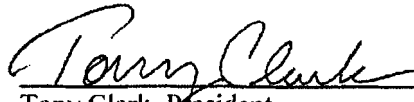


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